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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,060	03/01/2002	Caidian Luo	HARD1.033A	4640

60148 7590 04/25/2007

GARDERE / JAMES HARDIE
GARDERE WYNNE SEWELL, LLP
1601 ELM STREET
SUITE 3000
DALLAS, TX 75201

EXAMINER	
MARCANTONI, PAUL D	
ART UNIT	PAPER NUMBER
1755	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/090,060	LUO ET AL.	
	Examiner	Art Unit	
	Paul Marcantoni	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-8 and 39-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-8 and 39-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The applicants' amendment and response of 3/12/07 has been considered but is unpersuasive. The rejection under 35 USC 112, second paragraph has been withdrawn.

ODP:

Claims 1-4, 6-8, and 39-41 are rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-52, 1-78, and 1-72 of US Patent Nos. 6,676,745 B2 (Merkley et al.), 6,346,146 B1 (Duselis et al.), and 6,506,248 B1 (Duselis et al.) in view of Babachev et al. (see abstract).

35 USC 103:

Claims 1-4, 6-8, and 39-41 are rejected under 35 USC 103(a) as being unpatentable over Johnstone et al. '676 or Naji et al. '447 alone or in view of Babachev et al. and Jardine et al. '952 B1.

Suggestion:

Applicants are respectfully requested to insert the term –cationic—before quaternaryamine dispersant in claim 1 and any other claim it is used. Paragraph [0029] requires that the dispersant be a *cationic* quaternaryamine compound. Please insert this term in the next response and it will be entered even after final rejection to place the case in better condition for allowance or appeal.

Response:

The examiner would first wish to apologize for any discourtesies that may have been made in the previous non-final office action and notes that it has nothing to do with the applicants but only internal disagreements within the PTO. He regrets and confusion resulting from that.

The examiner agrees that the prior art does not teach pre-treating the cellulose fibers with the now claimed quaternaryamine dispersant. However, he has consistently relied upon In re Gibson 39 F 2d 975 5 USPQ 230 (CCPA 193) which states that the changes in the sequence of adding ingredients in a process to make a product would have been prima facie obvious to one of ordinary skill in the art *absent evidence to the contrary.* The prior art teaches and it is also conventional in the art to add a dispersant such as a quaternaryamine dispersant which is a conventional additive to cement. Dispersants are conventional additives to cement. The prior art does teach mixing quaternaryamine dispersant in a different order (not pretreating the fiber first than adding to cement but rather adding the cellulose fiber to a mixture of cement

and dispersant). The examiner maintains that there is proper motivation to add a dispersant though not for pretreating and though the order of mixing cellulose fiber and quaternaryamine dispersant is different, it would appear that the same product would result.

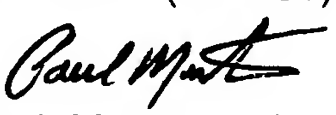
The examiner wishes to see this case move to allowance if at all possible and avoid appeal and thus recommends the following steps to do so. First, applicants should add the word –cationic--- before quaternaryamine as he asked for above. Second, the applicants should submit a 132 declaration by the inventors (it does not need be lengthy but can be brief if it makes its point in a shorter length) stating that the order of treating or pretreating is critical and would not lead to the same quaternaryamine dispersant treated cellulose fiber in a cement composite and explain specifically why this pretreating or specific order of pretreating the cellulose fiber with quaternaryamine dispersant is so important versus a different order. The examiner wishes to also point out he recalls having an interview over this application or a similar application with one or more of the inventors wherein the inventors showed him actual samples of how changing the order of treating or pretreating the cellulose fibers first is critical to making their product. They did show an inferior product sample of cellulose fiber cement product by not following the pretreating steps as called for in this instant invention. Therefore, any evidence of improved properties, strengths, durability, etc. that applicants can present and/or state as well as a possible photograph of the samples of their pretreated cellulose fiber cement product versus the cellulose fiber product with this dispersant in a different order would be considered beneficial and helpful in the examiner's decision to withdraw the rejections above. As always, if applicants have any questions with respect to the 132 declaration, they may call the examiner for further information. The examiner notes that this interview regarding display of samples did occur with the previous law firm so the present attorneys may not be aware of the previous attorneys of record's trip to discuss this application with the examiner. The examiner would allow this case but really needs the 132 declaration before he can allow this application and refute any rejection under In re Gibson.

The examiner believes that the finality of this office action is now proper. Any submission of 132 declaration after this final rejection will also be entered and considered by the examiner and it is hoped will place it in immediate condition for allowance. **THIS ACTION IS FINAL.**

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni
Primary Examiner
Art Unit 1755